79-670

No. 79-670

In the Supreme Court of the United States

OCTOBER TERM, 1979

ARNOLD L. CRANE,

Petitioner,

vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, CONSOLIDATED MUTUAL INSURANCE COMPANY, a New York corporation, DOUGLAS F. STEVENSON and LOUIS J. COHN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT

ARNOLD L. CRANE
Petitioner
2140 Lake Avenue
Wilmette, Illinois 60091
(312) 251-8715

Date: October 26, 1979

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

PAGE

Authorities Cited ii

Opinions Below 1

Jurisdiction 2

Questions Presented 3

Statutory Provisions Involved 3

Statement of the Case 5

Reasons for Granting the Writ 16

In the instant case, was substantial prejudicial error committed by the District Court by not having an evidentiary hearing and not allowing petitioner to amend his complaint and by holding the case for thirteen (13) months and twenty-two (22) days before Opinion was rendered thus allowing statute of limitations to run on a 1983 cause of action? 16

In the instant case, does Federal Rule of Civil Procedure 60(b)(6) afford an adequate remedy at law for the illegal looting of petitioner's legal documents from the custody of the United States District Court? 27

Conclusion 31

Appendix A — Order of United States Court of Appeals, dated May 3, 1979 .....App. 1

Appendix B — United States Court of Appeals Unpublished Per Curiam Order, dated May 3, 1979 App. 3

PAGE

Appendix C — United States Court of Appeals Denial for the Petition for Rehearing and Stay of Mandate May 29, 1979 ..... App. 4

Appendix D — United States District Court Memorandum Opinion and Order, dated October 30, 1978 ..... App. 6

Appendix E — United States Court of Appeals Denial of 60(b)(6) Petition, dated June 16, 1975 ..... App. 9

Appendix F — United States Court of Appeals, Denial of Motion for Leave of Court to Allege Proper Jurisdiction, dated July 29, 1975 ..... App. 10

Appendix G — United States Court of Appeals granting petitioner's motion to supplement record, dated January 25, 1979 ..... App. 11

AUTHORITIES CITED

Cases

Adickes v. S. H. Kress & Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 1604, 26 L.Ed.2d 142 (1970) 18

Bonner v. Coughlin, 417 F.2d 1311 (1975) U.S. Ct. of App., 7th Cir. 19

Carroll v. Sieloff, 514 F.2d 415 (1975), U.S. Ct. of App., 7th Cir. 22

Cartolano v. Tyrrell, 421 F.Supp. 526 (1976) 30

Clarke v. Burkle, 570 F.2d 824 (1978) U.S. Ct. of App., 8th Cir. 29

Conley v. Gibson, 78 S.Ct. 99 (1957) 28

Haines v. Kerner, 92 S.Ct. 594 (1972) 404 U.S. 519, 30 L.Ed.2d 652 29

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 64 S.Ct. 997 18

PAGE

Hostrop v. Bd. of Jr. College Dist. No. 515, 523 F.2d 569 (1975) U.S. Ct. of App., 7th Cir. 23

In the Matter of Special February 1977 Grand Jury, Appeal of United States of America, U.S. Ct. of App., 7th Cir., 581 A.2d 1262 (1978) 21

Lynch v. Household Finance Corp., 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972) 22

Monroe v. Pape, 365 U.S. 167, 184, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961) 18

Seaton v. Sky Realty Company, Inc., 491 F.2d 631 (1974) U.S. Ct. of App., 7th Cir. 22

Slavin v. Curry, 574 F.2d 1226 (1978) U.S. Ct. of App., 5th Cir. 27

Other Authorities

Accord, 2 J.B., Atlay, Victorian Chancellors 460 (1908) 20

Rule 15(a) Rules Civil Procedure for United States District Court 28

Fed. R. Civ. Pro. 60(b)(6) 25, 26, 27, 28, 29

Codes

United States Code, Title 28, Section 451 30

United States Code, Title 42, Section 1983 ..... 18, 30

United States Code, Title 42, Section 1985(2) 30

Constitutions

United States Constitution

Fourteenth Amendment 16

In the
Supreme Court of the United States

OCTOBER TERM, 1979

NO.

ARNOLD L. CRANE,

Petitioner,

vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, CONSOLIDATED MUTUAL INSURANCE COMPANY, a New York corporation, DOUGLAS F. STEVENSON and LOUIS J. COHN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SEVENTH CIRCUIT

The Petitioner Arnold L. Crane, respectfully prays that a writ of certiorari issue to review the Order of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 3, 1979.

OPINIONS BELOW

Order of the United States Court of Appeals for the Seventh Circuit, entered on May 3, 1979, appears in the Appendix as "A", Page App. 1.

United States Court of Appeals "Unpublished Per Curiam Order" entered on May 3, 1979, appears in the Appendix as "B", Page App. 3.

United States Court of Appeals for Seventh Circuit Denial of Petitioner's timely motion for extension of time to file Petition for Rehearing and Motion for Stay of Mandate, dated May 29, 1979, appears in the Appendix as "C", Page App. 4.

United States District Court for the Northern District of Illinois, Eastern Division, Memorandum Opinion and Order entered on October 30, 1978, appears in the Appendix as "D", Page App. 6.

United States Court of Appeals Order of June 16, 1975 denying petitioner's Petition under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination By This Court as Fraud Upon the Court filed June 12, 1975, appears in the Appendix as "E", Page App. 9.

United States Court of Appeals Order of July 29, 1975 denying petitioner's Motion For Leave of Court To Allege Proper Jurisdiction, appears in the Appendix as "F", Page App. 10.

United States Court of Appeals Order of January 25, 1979, granting petitioner's Motion t o Supplement the Record, appears in the Appendix as "G", Page App. 11.

JURISDICTION

A timely Application for Extension of Time to File a Petition for Writ of Certiorari was allowed and this Petition for a Writ of Certiorari was filed before October 26, 1979 as ordered by this Court on August 8, 1979. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. In the instant case, does a 60(b)(6) Petition preclude petitioner from filing a new cause of action against the defendants for their outrageous conduct and illegal looting of petitioner's legal property?

2. In the instant case, does Federal Rule of Civil Procedure 60(b)(6) afford an adequate remedy at law for the illegal looting of petitioner's legal documents from the custody of the United States District Court?

3. In the instant case, was substantial prejudicial error committed by the District Court by not having an evidentiary hearing and not allowing petitioner to amend his complaint and by holding the case for thirteen (13) months and twenty-two (22) days before Opinion was rendered: thus allowing statute of limitations to run on a 1983 cause of action?

STATUTORY PROVISIONS INVOLVED

1. AMENDMENT XIV. Citizenship; Privileges & Immunities; Due Process, Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement.

> Sec. 1. All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 42 U.S.C.A., Sec. 1983. Civil Action for deprivation of rights.

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

3. 42 U.S.C.A., Sec. 1985. Obstructing Justice; Intimidating party; witness, or juror.

"(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the qual protection of the laws;

4. 38 U.S.C.A., Sec. 31-4. Obstructing Justice. (Ill. Rev. Stat.).

"A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts: (a) Destroys, alters, conceals, or disguises physical evidence, plants false evidence, furnishes false information. . ."

STATEMENT OF THE CASE

Petitioner, ARNOLD L. CRANE, was injured in a work-related accident in 1964 and filed a Petition for Adjustment of Claim with the Illinois Industrial Commission.

The arbitrator made an award in petitioner's favor on March 4, 1970.

The defendants filed a Petition for Review and the Commission reversed the award made by the arbitrator, without an opinion, on June 28, 1971.

On August 21, 1971, petitioner filed suit in the United States District Court for the Seventh Circuit against defendants, STATE OF ILLINOIS INDUSTRIAL COMMISSION, CONSOLIDATED MUTUAL INSURANCE COMPANY, a New York corporation, DOUGLAS F. STEVENSON and LOUIS J. COHN, Case No. 71 C 2014, alleging fraud, conspiracy and negligence. The defendants, each and every one, at no time filed a sworn affidavit to refute the allegations of fraud, conspiracy or negligence.

On April 21, 1972, Judge McGarr in the United States District Court, Seventh Circuit, issued an Opinion and Order dismissing petitioner's cause of action.

Petitioner appealed to the United States Court of Appeals, Seventh Circuit and, on December 1, 1972 they affirmed the United States District Court's order.

Petitioner appealed the Industrial Commission's Decision on Review to the Circuit Court of Cook County, Illinois and on February 9, 1973, the Circuit Court affirmed the Industrial Commission's Decision.

When the Clerk of the Circuit Court of Cook County, Illinois prepared the record for appeal to the Illinois Supreme Court, his certification of a true, perfect and com-

plete transcript of record, dated June 7, 1973, as per praecipe showed that there were five (5) items missing from their records.

One of the items was Volume #1 (1 of 3 volumes) totalling approximately four hundred sixteen (416) pages of transcript of proceedings on arbitration in the Industrial Commission and, one (1) volume totalling two hundred four (204) pages of Brief of Transcript of Proceedings on Arbitration. This is the two hundred four (204) page Brief of Transcript of Proceedings that petitioner had to file three (3) times as it mysteriously disappeared twice.

The defendants, acting in concert with Fohrman, Assistant Attorney General (representing Illinois Industrial Commission in the Circuit Court of Cook County) and unknown co-conspirators, with the obvious purpose to deprive petitioner of his constitutional rights, looted petitioner's legal property from the Circuit Court of Cook County, Illinois for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice.

On August 6, 1973, petitioner filed an Ex Parte Motion in the United States District Court to "Release the Entire Record into the Custody of the Plaintiff for Transmittal to the Illinois Supreme Court."

The motion was first before Judge McLaren on August 7, 1973, who was sitting in for Judge McGarr who was unavailable. Judge McLaren continued the motion to September 10, 1973 before Judge McGarr, at which time Judge McGarr denied petitioner's Ex Parte Motion, as he would not allow the records to be removed from the court's custody.

After petitioner filed his appeal to the United States Court of Appeals but before any briefs were filed, on January 3, 1979, petitioner motioned the Court of Appeals

to Supplement the Record with "A certified copy (totalling approximately 76 pages) from The Illinois Supreme Court, Case No. 45819, ARNOLD L. CRANE vs. INDUSTRIAL COMMISSION OF ILLINOIS and CORBETTA CONSTRUCTION COMPANY, of a motion allowing appellant to file copies of the missing legal property consisting of selected federal court documents with index certified by a federad deputy clerk of the United States District Court, in lieu of getting certified copies, complete with an affidavit of petitioner and copies of the missing federal legal documents."

Petitioner's affidavit alleged that the Assistant Attorney General Fohrman, handling the case for the Illinois Industrial Commission had the property in his possession and that the First Assistant Attorney General, O'Rourke had knowledge of this fact but there is no record of his having ever taken any action. Petitioner was never notified that any action had ever been taken.

The Court of Appeals, Seventh Circuit granted the motion on January 25, 1979 with the request that a certified copy of the supplement be sent directly to them by the Illinois Supreme Court. The Illinois Supreme Court complied on February 5, 1979.

None of the defendants responded to a Notice to Respond sent to each and every one of them by the United States Court of Appeals.

On November 19, 1973, upon examination of petitioner's United States Court records with a Clerk of the District Court, petitioner discovered selected legal documents, consisting of affidavits, missing from the record (Case #71 C 2014.) The missing documents totalled approximately forty-two (42) pages.

(a) There were twenty-eight (28) pages missing from a total of four hundred seventy one (471) pages of the First Admissions filed December 1, 1971 in the United States District Court, Seventh Circuit.

(b) There were thirteen (13) pages missing from a total of two hundred sixty (260) pages of the Second Admissions filed March 8, 1972 in the United States District Court, Seventh Circuit.

These missing documents were not loose sheets but were bound and fastened with an acco fastener at the top in their order of filing in the record. Each defendant had received a copy of documents at time of filing.

Petitioner met with Mr. Fohrman, the Assistant Attorney General of the State of Illinois, who handled the case of ARNOLD L. CRANE v. THE STATE OF ILLINOIS INDUSTRIAL COMMISSION, CONSOLIDATED MUTUAL INSURANCE COMPANY, a New York corporation, DOUGLAS F. STEVENSON and LOUIS J. COHN, in the United States District Court, Seventh Circuit. The meeting took place in Mr. Fohrman's office.

Petitioner asked to see the State's copy of the two (2) Requests for Admissions and Evidence for the purpose of making a comparison with petitioner's records to ascertain if they were identical. Mr. Fohrman was agreeable and removed the documents from a file in his office and put them on his desk.

Petitioner noted that there were loose copies on top of one set of documents, all held together with a rubber band. Petitioner recognized the first three loose copies as three of those missing from the District Court records. As petitioner started to go through the rest of the loose papers he said to Mr. Fohrman, "these are the same copies that were missing from the United States District Court record", and asked him how he got these records. Mr.

Fohrman immediately picked them up and put them in his file and states "they are the private property of the State of Illinois." Fohrman refused to answer any questions and told petitioner that he would have to get a court order to see those records.

Petitioner advised Mr. O'Rourke, First Assistant Attorney General for the State of Illinois, of his conversation with Mr. Fohrman and asked Mr. O'Rourke to have Fohrman bring the records to his office in order to ascertain if they were, indeed, the missing records. At first O'Rourke was agreeable but after a short telephone conversation with Fohrman, petitioner was advised by O'Rourke that he would have to get a court order from Judge McGarr of the District Court to compare the records.

Petitioner appealed the Circuit Court's decision to the Illinois Supreme Court who, on March 29, 1974 affirmed and remanded with directions. The remand has never been heard.

Petitioner filed a Petition for a Writ of Certiorari with the Supreme Court of the United States on October 15, 1974, which was denied on December 9, 1974. A petition for rehearing was denied on January 27, 1975.

After the Supreme Court of the United States denied petitioner's petition for a writ of certiorari, in researching the law, petitioner discovered that a 60(b)(6) petition was applicable and an adequate remedy at law, in the case at bar without the necessity of filing separate suits alleging that these same defendants were instrumental in the illegal looting of petitioner's state and federal court records.

The following were notified of the systematic looting of petitioner's records:

(a) H. Stuart Cunningham, Clerk of the United States District Court. Petitioner filed a formal complaint with him.

(b) The Clerk for the chief judge of the United States District Court.

(c) Mr. O'Rourke, First Assistant Attorney General for the State of Illinois. Petitioner filed a formal complaint with him.

(d) The Illinois Supreme Court.

(e) The Supreme Court of the United States.

(f) Petitioner also had a discussion with the Federal Bureau of Investigation regarding the missing legal documents.

Petitioner was never notified that any action was ever taken by any of the above mentioned, although an adequate remedy at law existed.

On June 12, 1975, petitioner filed a petition in the United States Court of Appeals, Seventh Circuit, under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination by This Court as Fraud Upon the Court.

Petitioner did not hear from the Court of Appeals, so started building his new house, having received a permit from the Village of Wilmette on October 27, 1975.

The United States Court of Appeals denied petitioner's 60(b)(6) petition on *June 16, 1975* but petitioner never received the Order and did not learn of the order until *May 27, 1976*. On June 7, 1976 petitioner received a letter from Jeff E. Rogers, Staff Law Clerk of the United States Court of Appeals, advising that on *June 16, 1975* an Order was entered by the United States Court of Appeals denying petitioner's petition without prejudice to the right of

the petitioner to file a request for such relief in the District Court. The clerk advised that said order was mailed to petitioner in *June, 1975* but said order was never received by petitioner.

On *July 22, 1976,* petitioner was given a letter by John E. Panek, Chief Deputy Clerk of the United States Court of Appeals for the Seventh Circuit, indicating that petitioner had been sent a copy of the *June 16, 1975* order denying the motion, and said order had not been returned to the Court by the postoffice. He also indicated that their index show petitioner's correct address (at that time) as 1221 Sherwin Avenue, Chicago, Illinois and a subsequent address of 134 N. LaSalle Street, Chicago, Illinois 60603, Room 2106. At no time has petitioner ever had the address of 134 N. LaSalle Street.

Petitioner's name and correct address was typed in the petition, as well as on the blueback.

Petitioner filed a motion in the United States Court of Appeals on *June 30, 1975* for Leave of Court to Allege Proper Jurisdiction. An Order was issued on *July 29, 1975* denying petitioner's motion. Petitioner did not receive a copy of the court's order. Upon inquiry as to the status of petitioner's petition and motion on *May 27, 1976* at the Court of Appeals, an Order stapled to an envelope that had been returned to the Court of Appeals was given to petitioner. The envelope was postmarked *August 7, 1975* and returned to the Court by the postoffice marked "*Addressee unknown.*" The order was dated *July 29, 1975*. The envelope was addressed to petitioner at an address that he hadn't been at for approximately three (3) years. The clerk advised that they search the file to ascertain whether or not there is another address so that the document can be delivered. Even though petitioner's correct address was

on the motion and the blueback, it was never sent to him at that address.

On May 28, 1976, petitioner's new residence, still under construction, was damaged by fire which completely stopped construction. The Wilmette Fire Department was called at 5:15 A.M., by an ambulance going by the residence, and spent approximately forty-five (45) minutes striking the fire. The Wilmette Fire Department informed petitioner that the house would have been completely destroyed if they had not been notified in apt time.

Personal belongings, including practically all of the records that were needed to file petitioner's 60(b)(6) petition before Judge McGarr in the United States District Court, were in boxes and files in the garage and storeroom which was damaged by the fire.

Due to the ensuing confusion as a result of the fire, records were misplaced and could not be found because contents in boxes had to be dried out from the water damage and reboxed.

On September 8, 1977, petitioner filed the same petition "Petition Under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination by the Court as Fraud upon This Court, with the United States District Court, Seventh Circuit.

The District Court refused to order an evidentiary hearing on the illegal looting of petitioner's legal property, consisting of selected documents from the custody of the federal court and the theft of petitioner's Abstract of Brief and Transcripts from the records in the custody of the Clerk of the Circuit Court of Cook County, Illinois. These are criminal activities that are taking place against petitioner and both the federal and the state governments

with the intent to obstruct justice; the very institutions set up for the protection of public justice and should not be construed in any other manner.

On October 30, 1978, Judge McGarr, United States District Court, denied petitioner's petition for relief under 60(b)(6) filed on September 8, 1977. Said petition was before Judge McGarr for adjudication for approximately thirteen (13) months and twenty-two (22) days, and before his decision was rendered, the statute of limitations ran on any cause of action petitioner had under the Civil Rights Act, 42 U.S.C., Sec. 1983-1985(2), as a result of petitioner's legal property missing from the Circuit Court of Cook County, Illinois.

Judge McGarr, in his Order of October 30, 1978, stated in part:

> "If petitioner feels that other courts have been defrauded, then he must seek relief from those courts, not here."

Petitioner appealed Judge McGarr's Order to the United States Court of Appeals, Seventh Circuit, on November 27, 1978.

An Oral Hearing was scheduled for May 1, 1979 and petitioner was given ten (10) minutes for oral argument.

Petitioner once again became seriously ill while awaiting his turn to argue his case before the United States Court of Appeals.

Petitioner left the courtroom and advised a clerk of the Court of Appeals that he was ill. A nurse from the Health Care Unit in the federal building was called to administer first aid.

Petitioner was taken to the Health Care Unit by the nurse who was completely medically competent and concerned for the welfare of the patient. The nurse called the

Clerk of the Court and advised that petitioner would not be able to return for oral argument because of the seriousness of his illness and his erratic blood pressure readings that fluctuated some forty (40) degrees, his general condition at the time, and his previous history of malignant hypertension and heart attack. The nurse insisted that he go to a hospital at once; petitioner called the Mayo Clinic and arrived there on the morning of May 2, 1979.

The nurse's report, the Mayo Clinic and St. Mary's Hospital (in Rochester, Minnesota) records clearly substantiate the serious nature of the medical problems involved.

On May 17, 1979, open heart surgery, a triple bypass was performed as a result of petitioner's illness.

Oral Argument was never heard. It was taken under advisement per Rule 2, Fed.R.App.P. with consent of defendants. Petitioner was in St. Mary's Hospital when the decision, dated May 3, 1979, came down from the United States Court of Appeals for the Seventh Circuit.

Petitioner filed a motion for extension of time to file a Petition for Rehearing on May 10, 1979 and a motion for stay of Mandate was filed on May 14, 1979. The United States Court of Appeals denied both motions on May 29, 1979.

On July 26, 1966, as a result of petitioner's work-related back injury in 1964, a back fusion was performed at the Mayo Clinic.

On July 31, 1975, an emergency operation was performed at St. Francis Hospital in Evanston, Illinois for Chrohn's disease of the ileum with stricture of the small bowel.

From November 22, 1976 to December 2, 1976, as a result of petitioner's continuing partial disability and deteriorating health, petitioner was hospitalized in St. Mary's Hospital in Rochester, Minnesota with malignant hypertension, hypertensive retinopathy, papilledema and was under the care of the Mayo Clinic physicians.

On December 17, 1976, emergency care was rendered to petitioner and he was subsequently hospitalized as a result of reaction to medication and the malignant hypertension; upon petitioner's release from the hospital, he was advised to restrict his work.

From March 8, 1978 to March 25, 1978, as a result of continued malignant hypertension, petitioner was again hospitalized in St. Mary's Hospital, Rochester, Minnesota where he suffered an inferior myocardial infarction.

On June 6, 1978, petitioner was again hospitalized for three days after suffering a severe attack of chest pains and shortness of breath while on the Evanston Express train.

From December 11, 1978 to December 14, 1978, petitioner was hospitalized after suffering severe chest pains, shortness of breath, nausea and faintness in the Cook County Law Library, Chicago, Ill.

On May 1, 1979, petitioner became ill in the United States Court of Appeals while awaiting oral argument in the instant case.

On May 3, 1979, petitioner was hospitalized in St. Mary's Hospital, Rochester, Minnesota.

On May 17, 1979, petitioner underwent open heart surgery for a triple bypass in St. Mary's Hospital, Rochester, Minnesota.

REASONS FOR GRANTING THE WRIT

In the instant case, was substantial prejudicial error committed by the District Court by not having an evidentiary hearing and not allowing petitioner to amend his complaint and by holding the case for thirteen (13) months and twenty-two (22) days before Opinion was rendered thus allowing statute of limitations to run on a 1983 cause of action?

Justice Louis Brandeis said:

> "The right to be left alone,
> is the most comprehensive of rights,
> and the right most valued in civilized man."

Petitioner alleges that Fohrman, acting under color of state law and acting in concert with all of the defendants and unknown co-conspirators, each and every one of them, intentionally, systematically, invidiously, maliciously and illegally looted petitioner's legal property. Petitioner also alleges that these overt acts, and subsequent overt acts, are not disconnected or independent acts but a continuing conspiracy and reckless disregard to violate petitioner's clearly established constitutional rights under the Fourteenth Amendment to the Constitution of the United States.

It is beyond question that these manifestly unconscionable, invidious, intentional overt acts are in furtherance of the continuing conspiracy and should convince this Court, beyond a reasonable doubt, that the defendants and unknown co-conspirators received aid, comfort and incentive by acting in concert with Fohrman; that these self-same circumstances as intertwined in all of the evidence, so far established, clearly and logically point to the inevitable and irrestible conclusion that these are not unrelated or isolated incidences but a well established scheme to wilfully, knowingly and maliciously obstruct justice.

Although Assistant Attorney General Fohrman has had the opportunity, he has never denied, by affidavit or otherwise, the looting of petitioner's records from the federal court's custody, that he has the missing records in his possession, or that he acted in concert with the other defendants and unknown co-conspirators.

It was the responsibility and duty of O'Rourke, First Assistant Attorney General for the State of Illinois, who was acting under color of state law, when notified, to take immediate affirmative action to ascertain if Fohrman was involved in the illegal looting of petitioner's records and make a record of petitioner's official complaint.

If Fohrman was involved, it was O'Rourke's duty, who is also an officer of the court and a law enforcement officer sworn to protect all citizens of the State of Illinois, to notify the proper federal authorities.

To-date, petitioner has never been notified that this was ever done. Then, it can be said with assurance that O'Rourke invidiously used his office to cover up the fact that Fohrman was involved with all defendants and unknown co-conspirators in criminal activities against the federal courts and petitioner's clearly established constitutional rights.

Petitioner acknowledges that he fulfilled his responsibility by notifying both the federal and state courts of the systematic looting of selected documents from petitioner's record in the federal courts and the looting of petitioner's Brief of Abstract and Transcripts from the state court.

From the beginning of the legal proceedings in the state and federal courts and subsequently thereto, the defendants and unknown co-conspirators and Assistant Attorney General Fohrman, acting under color of state law, who invidiously used his office, conspired, planned and agreed with

each other for the purpose of impeding, hindering, obstructing or defeating the due course of justice in the State of Illinois. Fohrman's, the defendants' and unknown co-conspirators' intent was to deny to the petitioner the equal protection of the law and to injure him for enforcing or attempting to enforce his constitutional rights while legal proceedings were being held in both the federal and state courts, to the equal protection of the laws in that the individual defendants planned and agreed to commit, or cause and procure to be committed, or allow, permit, consent, acquiesce, countenance and approve to be committed all the acts hereinafter alleged under the circumstances hereunder alleged.

The allegations made by petitioner cumulatively add up to a wholesale case of invidious discrimination and conspiracy.

State officials and state courts, like federal officials and federal courts have a constitutional obligation to safeguard personal liberties.

The thrust of a Sec. 1983 action is to protect against the misuse of power by state officials. *Monroe* v. *Pape,* 365 U.S. 167, 184, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

It is beyond dispute that petitioner established that (a) he was deprived of a right secured by the Constitution and laws of the United States within the meaning of Sec. 1983, *Adickes* v. *S.H. Kress & Co.,* 398 U.S. 144, 150, 90 S.Ct., 1598, 1604, 26 L.Ed.2d 142 (1970), and (b) that he was deprived of his constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" by Fohrman, acting under color of state law in concert with all defendants and unknown co-conspirators.

In *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.,* 64 S.Ct. 997, decided May 15, 1944, p. 1001, the court said:

> "* * * tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is the wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

The courts intentionally ignored the clearly established fact that Fohrman invidiously used his office to engage in criminal activities with these defendants and unknown co-conspirators to discriminate and conspire against petitioner.

In Stevenson's Answer to petitioner's Brief, he is in accord with petitioner's allegations:

> "* * * the only allegation of fraud which could be passed on by the district court was Mr. Crane's allegations regarding documents being missing from the district court file."

but defendant Stevenson is intentionally silent as to the missing documents from the Circuit Court of Cook County, Illinois.

In *Bonner* v. *Coughlin,* 417 F.2d 1311 (1975) U. S. Court of Appeals, Seventh Circuit, p. 1318, the court held:

> "* * * The first question to be asked is not what kind of conduct will breach the defendants' duty under Sec. 1983, but rather, precisely what is that duty?
>
> "(6) The statute protects the plaintiff from 'the deprivation of any rights, privileges, or immunities secured by the Constitution. . . .' The constitutional right invoked by plaintiff's alternative argument, as

> we understand it, is the Fourteenth Amendment right not to be deprived of property without due process of law. Bonner's transcript, is certainly 'property' within the meaning of the Fourteenth Amendment; . . ."

Cohn, Stevenson and the Carrier knew and worked with each other; they had a financial interest in their respective violations of the law committed in furtherance of the alleged conspiracy and the intentional and invidious discrimination in that each stood to gain financially.

There is sufficient evidence to support petitioner's allegations, which the courts and the defendants have never attacked as being insufficient, and petitioner's evidence provides a sufficient basis from which the courts should have inferred that each of the substantive offenses committed by defendants was part of an overall scheme to conspire and discriminate against petitioner.

There was sufficient evidence for the state and federal courts to find the existence of intentional, invidious discrimination and conspiracy which was continuous.

The Commission and state courts would never acknowledge that there was any favoritism shown to any of the defendants or that they or any of the sitting commissioners and judges were engaged in the practice of an intentional, invidious discrimination and conspiracy — least of all against a layman.

The deliberate undermining of petitioner's clearly established constitutional rights must not be countenanced.

Accord, 2 J.B. Atlay, Victorian Chancellors 460 (1908) (quoting Lord Herschell):

> "(I)mportant as it was that people should get justice. it was even more important that they should be made to feel more important that they should be made to feel and see that they were getting it."

In the *Matter of Special February 1977 Grand Jury, Appeal of United States of America,* U. S. Ct. of App., 7th Cir., 581 F.2d 1262 (1978), p. 1264, the court said:

> "In the first place, it seems clear that the United States Attorney has standing to call the district court's attention to a possible ethical violation concerning the grand jury proceeding:
>
> > "When an attorney discovers a possible ethical violation concerning a matter before a court, he is not only authorized but is in fact obligated to bring the problem to that court's attention. Nor is there any reason why that duty should not operate when, as in the present case, a lawyer is directing the court's attention to the conduct of opposing counsel. In fact, a lawyer's adversary will often be in the best position to discover unethical behavior . . . Appellant has failed to persuade us that different rules of standing and jurisdiction should apply when criminal proceedings are in the grand jury stage."

In the instant case, the district court refuses to be bothered by justifiable allegations made by petitioner of misconduct by the assistant attorney general, Fohrman, acting under color of state law and representing the State of Illinois during the course of proceedings before the courts.

The court completely ignored, without justification, its duty and responsibility on two separate occasions:

(1) Refusing to take affirmative action regarding petitioner's "Petition Under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination by the Court as Fraud Upon the Court," filed in federal court.

(2) Refusing to take affirmative action against Fohrman for his refusal to honor Judge McGarr's Order:

> "to make all pleadings and transcripts in matters relating to plaintiff available to him for inspection and/or copying at his expense."

Petitioner filed an affidavit in United States District Court alleging the intentional misconduct of Fohrman in refusing to honor Judge McGarr's Order.

Fohrman unequivocally stated to petitioner that he was not refusing to honor the Order on his own volition, but that he was following orders from someone he would not identify.

In *Carroll* v. *Sielaff*, 514 F.2d 415 (1975), U. S. Ct. of App., 7th Cir., this court held that:

> "The district court's statement that allegations of unlawful appropriation of non-legal property do not state a cause of action under the Civil Rights Act appears contrary to guidance provided in *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972), wherein the Supreme Court said:
>
> "This Court has never adopted the distinction between personal liberties and proprietary rights as a guide to the contours of Sec. 1343(3) jurisdiction. Today, we expressly reject that distinction."

Conduct of defendants, Fohrman, and unknown co-conspirators was more than a spontaneous outburst; it was a calculated tactic designed to bring undue stress on petitioner for exercising his clearly established constitutional rights.

Their conduct was beyond all possible bounds of decency and utterly intolerable in a civilized community.

The intentional infliction of emotional distress is actionable under the Civil Rights Statute. In *Seaton* v. *Sky Realty Company, Inc.*, 491 F.2d 631 (1974) U. S. Ct. of App., 7th Cir., the court held:

> "* * * Humiliation can be inferred from the circumstances as well as established by the testimony. * * * Compensatory damages are an appropriate remedy for deprivation of a federal right, are governed by federal standards, and 'both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes.' . . . The rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired." *Hostrop* v. *Bd. of Jr. College Dist. No. 515*, 523 F.2d 569 (1975) U. S. Ct. of App., 7th Circuit.

Petitioner's health has steadily deteriorated and resulted in catastrophic serious illnesses from the date of his back injury in 1964 to the present time. It can be said with a reasonable degree of medical certainty that petitioner's serious medical condition was a result of the invidious and outrageous conduct of the defendants, Fohrman and unknown co-conspirators. At the present time it is too early to tell what the prognosis is for the future.

The Illinois Industrial Commission completely ignored the medical facts established in the record as to the duration of petitioner's illness and there is no legal or medical basis to support the Commission's Decision on Review.

The Commission invidiously used their office to show their displeasure of petitioner's exercising his constitutional rights to secure a fair and impartial hearing and their decision was the result of intentional discrimination, oppression, prejudice, passion and vindictiveness.

This court should also realize, and it should come as no surprise, that the complaint is often made, and sometimes with justification, that there is intentional, invidious discrimination, favoritism and other objectional handling of cases, as shown in the letter below.

On September 12, 1972 Cohn,[1] attorney for the Carrier, sent Judge Egan, Circuit Court of Cook County, Illinois, an Abstract previously filed with the Commission, together with an additional page of citations, and a copy of the letter and the attachment was also sent to petitioner. Inad-

vertantly enclosed with the above copy to petitioner was an *original* of a letter, which we quote in full for the court's convenience.

"September 12, 1972
Miss Diana Armstrong
Consolidated Mutual Insurance Company
410 North Michigan Avenue
Chicago, Illinois

RE: ARNOLD CRANE
vs. Corbetta Construction Company
File No. 14-44047

Dear Miss Armstrong:

We spent the entire morning of September 11, in Judge Egan's courtroom all to no avail. After allowing Mr. Crane to ramble on for some length of time Judge Egan then granted him thirty days to file a ten page document containing what Mr. Crane considers to be the significant errors on the record which he was relying. Further the Judge demanded that Mr. Crane put in this document what action he wishes the Court to take and the basis for that action. He has been given thirty days to file this document and the Judge indicated that after receipt of that document and the reading of my abstract and final points of authority he would then render a decision subsequent to that date.

It appears that Judge Egan is also very wary of Mr. Crane and is afraid of setting Mr. Crane off once again. In addition, I think he wants to have on the record all of Mr. Crane's peculiar notions so that a reviewing court will realize that there was no relief which Judge Egan could have given Mr. Crane under any circumstance.

Very truly yours,
COHN, COHN & LAMBERT
By: /s/ Louis J. Cohn
Louis J. Cohn

LJC:db
cc: Mr. James Laiacona"

[1] Cohn's entire firm, Cohn, Cohn, Lambert & Phillips, specializes in Workman's Compensation cases.

If Judge Egan (a) wanted to see substantial justice done, (b) wasn't invidiously using his office for intentional, invidious discrimination, (c) wanted every person to have his day in court, per previous statements made by him, (d) wasn't just going through the motions to make a record, then Judge Egan had the legal responsibility to hold an immediate hearing in open court with a court reporter in attendance, where allegations could have been made by petitioner and Cohn would have a right to answer said allegations. However, this letter was legally embarrassing and prejudicial to Cohn and the Carrier, so the Court completely ignored it to the prejudice of the petitioner.

Later, Judge Downing (hearing cases for J. Egan) refused to get involved over the controversy of the contents of the letter. Judge Downing refused to allow the letter in evidence as an exhibit and completely ignored it as Cohn had admitted that the letter was completely prejudicial to him. Judge Downing affirmed the decision of the Commission.

Petitioner filed his 60(b)(6) on June 12, 1975 in United States Court of Appeals and an order was issued by the Court of Appeals on June 16, 1975, stating:

> "IT IS ORDERED that said petition is hereby DENIED, without prejudice to the right of the petitioner-appellant to file a request for such relief in the District Court."

However, petitioner did not learn of the Court of Appeal's Order until *May 27, 1976* and the fire in petitioner's new residence was discovered approximately 5:15 A.M. on *May 28, 1976.*

If petitioner had received the Court of Appeal's Order of June 16, 1975, *when issued,* he would not have started construction on his residence, but rather would have filed

his 60(b)(6) with the United States District Court, as it wouldn't have taken that much time.

Since petitioner has always made timely filings of pleadings, it is not conceivable that he would have jeopardized his position in this filing.

The strange aspect of this case was the timing and convenience of the fire; that the fire occurred the very next day after petitioner discovered that the Court of Appeals had issued their order almost a year earlier and he had had no notification of it.

If the house had been destroyed, there would have been no 60(b)(6) petition filed in the United States District Court; there would have been no appeal to the United States Court of Appeals, and there would have been no appeal to this court. No one but the defendants, Fohrman and unknown co-conspirators would have benefited from this.

The ensuing chaos was prejudicial to petitioner in that practically all of the records needed to file the 60(b)(6) petition in the United States District Court were in boxes and files in the garage and storeroom which was damaged by the fire. Records were misplaced and could not be found because contents in boxes had to be dried out from the water damage and reboxed.

To date, it has not been legally determined whether the fire was a negligent act or a deliberate overt act or whether it was started by Wheeling Plumbing Co., a subcontractor working in the residence, by Wheeling's agents or by the defendants in the instant case acting in concert with Wheeling or unknown co-conspirators. However, the fire effectively stopped construction on the residence.

Wheeling Plumbing, the subcontractor on petitioner's residence, filed suit in Circuit Court of Cook County, Illinois to foreclose a mechanics lien on the contract. Petitioner's counsel filed an answer and counterclaim alleging Wheeling started the fire in petitioner's residence. However, petitioner's counsel intentionally left out essential allegations that defendants in the instant case could have been acting in concert with Wheeling and unknown co-conspirators and started the fire.

Some of Wheeling's work proved to be defective and for some suspiciously strange unknown reason Wheeling has persisted in refusing to inspect and correct their defective work, which is unheard of in the trade and not in accordance with accepted practices in the industry, unless the defective work, the nature of some of it could very well have been overt acts by Wheeling, acting in concert with defendants and unknown co-conspirators in the instant case, was done intentionally and deliberately to harass and aggravate petitioner's known failing health condition and hinder and disrupt construction on his residence.

In *Slavin* v. *Curry,* 574 F.2d 1226 (1978) U.S. Ct. of App., 5th Cir., the court held:

> "That is, it reveals a conspiracy that began with the intention of denying Slavin the equal protection of the laws and continued by obstructing justice and denying due process in an attempt to conceal the complicity in the first action. While they state separate causes of action against individual defendants, they also charge participation in a single conspiracy. The district court erred in treating the incidents as alleging only separate causes of action."

In the instant case, does Federal Rule of Civil Procedure 60(b)(6) afford an adequate remedy at law for the illegal looting of petitioner's legal documents from the custody of the United States District Court?

A highly significant principle of law is involved in the case at bar, as petitioner sees it; one that involves not only the integrity of these defendants but petitioner's as well, and accordingly, there will *never* be room for compromise.

In reviewing the sufficiency of a complaint, the issue is not whether the plaintiff will ultimately prevail or is likely to prevail, but only whether the claimant is entitled to offer evidence to support the claim.

After holding petitioner's petition for thirteen (13) months and twenty-two (22) days, the refusal of Judge McGarr to grant leave to petitioner to reopen Case No. 71 C 2014 and amend his complaint, as requested in petitioner's petition under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination by This Court as Fraud Upon the Court, was not a valid exercise of the District Court's discretion in view of the record under the circumstances; rather it was clearly "abuse of that discretion and inconsistent with the spirit of the Federal Rules of Civil Procedure" although petitioner has made a threshold showing of invidious conduct and bad faith by these defendants, Assistant Attorney General Fohrman and unknown co-conspirators and, therefore, has proved a colorable entitlement to an evidentiary hearing. The Court's abuse of that discretion resulted in manifest prejudice which constitutes ground for reversal.

Rule 15(a), Rules of Civ.P. for U.S. District Court states in part:

> "* * * Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. * * *"

In *Conley* v. *Gibson,* 78 S.Ct. 99, at 102 (1957), the court said:

> "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

* * * at 103, the court said:

> "The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues * * * The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." See also *Haines* v. *Kerner,* 92 S.Ct. 594 (1972) 404 U.S. 519, 30 L.Ed.2d 652.

In the instant 60(b)(6) case, no evidentiary hearing was held by the district court, although there were extraordinary circumstances involved; thereby denying appellant an opportunity to offer probative evidence in support of his position and resulting in an incomplete record, which was substantially prejudicial to appellant and resulted in a clear abuse of discretion. In *Clarke* v. *Burkle,* 570 F.2d 824 (1978) *Court of Appeals, 8th Cir.,* p. 832 the court held:

> "We do not say that an evidentiary hearing in connection with the Rule 60(b) motion would necessarily have done the plaintiff any good. However, to have

held the hearing would have consumed little time and effort, and in ruling upon the motion and amendments the district court would have had the benefit of all of the facts, and we would have had the benefit of those facts in reviewing the action of the district on appeal. In our opinion the action of the trial court in failing to hold a hearing legally amounted to an abuse of discretion, and we think that a hearing must now be held by the district court."

It is inconceivable that the district court, in its discretion, did not order an evidentiary hearing to ascertain if the allegations made by appellant were true, and which, if any, of the defendants or unknown parties were responsible for such unconscionable conduct, and if they were acting under color of state law and in violation of the Civil Rights Statute 42 U.S.C., Secs. 1983 and 1985(2).

Appellant has proved beyond a reasonable doubt and to a certainty that the defendants and unknown co-conspirators were deliberately playing fast and loose with the administration of justice under the Civil Rights Statute, 42 U.S.C. Sec. 1983 and 1985(2), in the federal and state courts and the Illinois Industrial Commission, which is completely supported by the record, knowing full well they had little to fear up until the present time. The issue is that the defendants and unknown co-conspirators should not be able to profit from their intentional, outrageous and malicious conduct which is prohibited by federal statute.

In *Cartolano* v. *Tyrrell,* 421 F. Supp. 526 (1976), in Footnote 3, the court said:

> "We note parenthetically, that even if plaintiff had alleged interference with respect to any party, witness or juror in the proceedings before Judge Baker, he still would not have stated a claim under the first portion of Sec. 1985(2) since that portion of the statute deals with "*any court of the United States.*" As defined in 28 U.S.C. Sec. 451, "court of the United States" refers only to Article III courts and certain federal courts created by Act of Congress, and does not include the various state courts such as the Circuit Court of McHenry County."

It is beyond dispute that now is the time for this Court to determine whether the proven acts and circumstances, if believed, are sufficient in law to show an unlawful combination by the parties.

Where subsequent acts are relied on to establish a conspiracy, they must clearly indicate the prior collusive combination and fraudulent purpose and must warrant the conclusion that the subsequent acts were done in furtherance of the unlawful combination and in pursuance of the fraudulent scheme.

> "The evidence must do more than raise a suspicion. It must lead to belief."

CONCLUSION

According to petitioner's research, the instant case is one of first impression.

Generations before us have known that our constitution works and that no one—absolutely no one is above the law.

This Petition for Certiorari should be allowed in view of the extreme importance of the issues raised herein which have not been, but should be, resolved by this Court.

Respectfully submitted,

ARNOLD L. CRANE
2140 Lake Avenue
Wilmette, Illinois 60091
(312) 251-8715
Petitioner

Dated: October 26, 1979

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted: May 1, 1979

May 3, 1979

Before
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*

ARNOLD L. CRANE,

Plaintiff-Appellant,

No. 78-2565 vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, et. al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 71-C-2014 — Frank J. McGarr, *Judge.*

ORDER

Plaintiff-appellant Arnold Crane, acting pro se, appeals from an order denying his motion under Rule 60(b) for relief from the April 21, 1972 judgment dismissing his action.* Plaintiff seeks relief from the judgment by im-

---

* Just prior to oral argument in this case, plaintiff notified the court by telephone that due to illness he would not be able to argue the case and sought to submit the case on the briefs. In response to questions from the bench, the defendants expressed no objection to that procedure, so the case has been submitted on the briefs and record, pursuant to Rule 2, Fed. R. App. P.

plying that defendants committed fraud on the court by removing certain documents from the record. We affirm the denial of the 60(b) motion.

The documents allegedly removed from the district court's files dealt primarily with the merits of plaintiff's workmen's compensation claim and had nothing to do with the propriety of the dismissal for lack of federal jurisdiction affirmed by this court. *Crane* v. *Illinois Commission,* No. 72-1480 (7th Cir. December 1, 1972) (unpublished order). Thus even if established, the alleged "fraud on the court" would not justify relief from the 1972 dismissal. Moreover, plaintiff does not allege when the documents were removed. Unless they were removed before the district court dismissed and this court affirmed, the alleged "fraud" could have had no effect at all on the 1972 judgment. Furthermore, it cannot be said that the district court abused its discretion in holding that plaintiff failed to seek relief from the judgment within a reasonable time. At best, plaintiff sought relief in this court on June 12, 1975, more than three years after the district court dismissed the case and more than a year and a half after plaintiff discovered the alleged fraud.

The order of the district court denying relief from its prior judgment is affirmed.

APPENDIX B

Unpublished Per Curiam Order

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 3, 1979.

Before
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*

ARNOLD L. CRANE,

Plaintiff-Appellant

No. 78-2565 vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 71-C-2014 — Frank J. McGarr, *Judge.*

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 29, 1979

Before

Hon. WILBUR F. PELL, Jr., *Circuit Judge*

Hon. ROBERT A. SPRECHER, *Circuit Judge*

Hon. WILLIAM J. BAUER, *Circuit Judge*

ARNOLD L. CRANE,

Plaintiff-Appellant,

No. 78-2565 vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 71-C-2014 — Frank J. McGarr, *Judge.*

This matter comes before the court for its consideration upon the filing herein of the following documents:

1) The "MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR REHEARING" filed herein on May 10, 1979 by counsel for the plaintiff-appellant.

2) The "MOTION FOR STAY OF MANDATE" filed herein on May 14, 1979 by counsel for the plaintiff-appellant.

This court has thoroughly reviewed both of the aforesaid documents. On consideration thereof,

IT IS ORDERED that the plaintiff-appllant's motion for an extension of time within which to file his petition for rehearing is hereby DENIED.

IT IS FURTHER ORDERED that the plaintiff-appellant's motion for stay of mandate is hereby DENIED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF ILLINOIS
EASTERN DIVISION

ARNOLD L. CRANE,

Plaintiff,

v. No. 71 C 2014

STATE OF ILLINOIS INDUSTRIAL COMMISSION, CONSOLIDATED MUTUAL INSURANCE COMPANY, a New York corporation, DOUGLAS F. STEVENSON, and LOUIS J. COHN,

Defendants.

MEMORANDUM OPINION AND ORDER

Under Rule 60(b)(6), Fed.R. Civ.P., petitioner now seeks relief from dismissing the action for want of jurisdiction. The petition is denied.

Specifically petitioner alleges that, throughout the several proceedings he has pursued before the State of Illinois Industrial Commission and various reviewing courts, his adversaries conspired to deprive him of various of his constitutional rights and conspired to defraud the various tribunals. Petitioner sought the same relief before the United States Court of Appeals for the Seventh Circuit in case number 72-1480 in which the court stated and held the following:

> This matter comes before the court on "Petitioner-Appellant Petition Under Federal Rules Civil Procedure 60(b)(6) Independent Action for Hearing and Determination By This Court as Fraud Upon The Court" filed herein on June 12, 1975. Upon consideration whereof, this Court being fully advised in the circumstances,
>
> It is ordered that said petition is hereby Denied, without prejudice as to the rights of the petitioner-appellant to file a request for such relief in the District Court.

It is pursuant to the last-quoted sentence that petitioner files in this court.

The availability of relief under Rule 60(b)(3) for fraud or misrepresentation of an adverse party is conditioned upon commencement of the proceeding within one year after judgment. This court's final order was entered on April 21, 1972. Petitioner sought relief in the court of Appeals, its decision being handed down June 16, 1975. The petition in this court was filed on September 8, 1977, well more than one year after judgment. Therefore, petitioner cannot base his petition under Rule 60(b) on fraud or misrepresentation. Apparently aware of this fact, and although the thrust of petitioner's argument deals with fraud on the court, petitioner carefully couches his petition in terms of Rule 60(b)(6), Fed.R.Civ.P., "any other reason justifying relief from operation of judgment." Such relief must be sought within a reasonable time after judgment.

The court has carefully perused the voluminous record in this case and finds no indication of fraud or any other reason justifying relief from this court's order entered April 21, 1972, dismissing the action. Moreover, a period of over five years after judgment in this court and over two years after the decision of the Court of Appeals is not a reasonable time.

It is also apparent that petitioner misunderstands the operation of Rule 60(b). Relief thereunder is available only where the court from which relief is sought has some reason to question the propriety of the proceedings before it. As stated above, no such reason exists in this court. If petitioner feels that other courts have been defrauded, then he must seek relief from those courts, not here.

The petition dated September 8, 1977 for relief from this court's final order dismissing the action, entered April 21, 1972, is hereby denied.

ENTER:

Frank J. McGarr

UNITED STATES DISTRICT JUDGE

DATED: October 26, 1978

APPENDIX E

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 16, 1975

Before

Hon. LUTHER M. SWYGERT, *Circuit Judge*

Hon. .....

Hon. .....

ARNOLD L. CRANE,

Plaintiff-Appellant,

No. 72-1480 vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(71 C 2014)

This matter comes before the court on the "Petitioner-Appellant Petition Under Federal Rules Civil Procedure 60(b)(6) Independent Action For Hearing And Determination By This Court As Fraud Upon The Court" filed herein on June 12, 1975. Upon consideration whereof, this Court being fully advised in the circumstances,

IT IS ORDERED that said petition is hereby DENIED, without prejudice to the right of the petitioner-appellant to file a request for such relief in the District Court.

APPENDIX F

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 29, 1975

Before

Hon. LUTHER M. SWYGERT, *Circuit Judge*

Hon. .....

Hon. .....

ARNOLD L .CRANE,

Plaintiff-Appellant,

No. 72-1480 vs.

STATE OF ILLINOIS INDUSTRIAL COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(71 C 2014)

This matter comes before the court on the appellant's "Motion For Leave Of Court To Allege Proper Jurisdiction". On consideration whereof,

IT IS ORDERED that the motion is hereby, DENIED.

APPENDIX G

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 25, 1979

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. .....
Hon. .....

ARNOLD L. CRAN,

Plaintiff-Appellant,

No. 78-2565 vs.

STATE OF ILLNOIS INDUSTRIAL COMMISSION, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 71-C-2014

Frank J. McGarr, Judge

This matter comes before the court upon the filing of:

1. "MOTION TO SUPPLEMENT THE RECORD" filed herein on January 23, 1979 by counsel for the plaintiff-appellant.

2. "ANSWER AND RESPONSE TO NOTICE AND COMPLAINT BY ARNOLD L. CRANE, APPELLANT" filed herein on January 24, 1979 by counsel for the defendant-appellee.

On consideration whereof,

IT IS ORDERED that the "MOTION TO SUPPLEMENT THE RECORD" is hereby GRANTED.

Appellant is hereby authorized to request a certified copy of the motion to file copies of missing legal documents filed in *Arnold Crane vs. Industrial Commission of Illinois,* Case No. 45826 in the Illinois Supreme Court. This certified copy shall be filed herein on or before February 15, 1979.

IT IS FURTHER ORDERED that plaintiff-appellant is hereby GRANTED leave to supplement the record with (1) the affidavit of Claire Crane dated June 14, 1976; (2) the letter from a law clerk of this court dated June 7, 1976; and (3) the letter from the Chief Deputy Clerk of this Court dated July 22, 1976. These materials shall be tendered to the office of this clerk on or before February 8, 1979.

IT IS ALSO ORDERED that this order is without prejudice to appellee to reraise arguments going to the merit of this appeal by means of a Circuit Rule 15 motion.